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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
09/654,571 09/01/2000 Christopher Morgan Rowden ELAND.0001 6908

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EXAMINER

PAPPAS, PETER

ART UNIT PAPER NUMBER

2628

Table with 3 columns: SHORTENED STATUTORY PERIOD OF RESPONSE, MAIL DATE, DELIVERY MODE
3 MONTHS 03/09/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

<b>Application No.</b> 09/654,571	<b>Applicant(s)</b> ROWDEN, CHRISTOPHER MORGAN	
<b>Examiner</b> Peter-Anthony Pappas	<b>Art Unit</b> 2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 14 December 2006.
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-16 and 18-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 9-16, 18 and 19 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) 1-8 and 20 are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 14 June 2004 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
- Certified copies of the priority documents have been received.
  - Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 9-16, 18 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. While abstract ideas, natural phenomena and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. *Diehr*, 450 U.S. at 187, 209 USPQ at 8 (“application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”); *Benson*, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it “has no substantial practical application”). To satisfy section 101 requirements, the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways: the claimed invention “transforms” an article or physical object to a different state or thing; the claimed invention otherwise produces a useful, concrete and tangible result.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-11, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mykrantz (U.S. Patent No. 5, 246, 253).

5. In regard to claim 9 Mykrantz teaches garden planning aids and more specifically to a garden planning kit. Mykrantz teaches that it is desirable when planting a garden (e.g. a flower garden), to plan its appearance prior to engaging in the labor and expense of planting the garden. The selection of certain plants and their location in the garden depends to a significant degree upon the appearance of the plants during different times of the year (col. 1, lines 5-12).

Mykrantz teaches a worksheet 12 (landscape plan for a property) which has been imprinted with horizontally and vertically extending lines to form a grid 14, and an elongate, rectangular template 16 having the openings 18 in it in the shape of the top plan appearance of predetermined sizes of plants for drawing outlines of these plants on the worksheet 12 as they would appear from above the garden. In the preferred embodiment, three openings 18 of different sizes are provided. The openings 18 have an irregular perimeter which simulates the top plan appearance of the perimeter of plants. The three sizes provided allow accurate representation of nearly all common garden plants (col. 1, lines 56-68; col. 2, lines 1-4). It is noted said openings 18, which have a respective perimeter, are considered to read on respective plant diameters.

Mykrantz teaches a first set 30 and a second set 32 of self-adhesive decals (symbols) are mounted on sheets of backing paper 36. Decals 30A of the first set 30 are representative of the green leafy portions of plants. However, it is to be understood

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that the decals 30A generally may represent the base, or lower portion of the plant, whether or not this portion is green or composed of leaves. The decals 30A generally have a color corresponding to the color of a particular type of plant represented, and are imprinted to depict leaves of different types of plants. In the preferred embodiment, decals 30A corresponding to the leafy portions of plants are provided in three different colors (leaf texture) and sizes, and five leaf types (e.g. corresponding to fern-like leaves, etc.). The second set of decals 32A have the color and shape of the blooms of plants. The decals 32A come in many different colors so that the flowers of nearly all types of blooming plants may be depicted (col. 2, lines 14-31).

Mykrantz teaches that said bloom decals 32A also come in different sizes and densities corresponding to the appearance of the blooms of various plant species. In the preferred embodiment, decals 32A of the second set come in seven colors, three sizes, five patterns (e.g., having a rose-like bloom, etc.), and two densities (col. 2, lines 38-43). A chart is again consulted to determine the decal 32A depicting appropriate color, size, type and density of the bloom for the plants which bloom during a particular time of year (col. 2, lines 58-61). Mykrantz teaches that said decals are applied to said worksheet (Fig. 2).

6. In regard to claim 10 the rationale disclosed in the rejection of claim 9 is incorporated herein (col. 1, lines 56-68; col. 2, lines 1-4). It is noted that plant width is considered to read on plant diameter.

7. In regard to claim 11 the rationale disclosed in the rejection of claim 1 is incorporated herein (col. 2, lines 14-31).

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8. In regard to claim 15 Mykrantz teaches a chart (legend) for identifying said symbols (col. 2, lines 50-53, 58-61).

9. In regard to claim 16 the rationale disclosed in the rejection of claim 1 is incorporated herein (col. 2, lines 14-31). It is noted a sheet containing said decals, which have a color corresponding to the color of a particular type of plant represented, is considered to read on a list of plants belonging to a specific plant category.

***Claim Rejections – 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mykrantz (U.S. Patent No. 5, 246, 253), as applied to claims 9-11, 15 and 16, in view of Broderbund (Total 3D Landscape Deluxe 3.0).

12. In regard to claim 12 Mykrantz fails to explicitly teach respective plant categories for deciduous plants and evergreen plants. Broderbund teaches an electronic garden landscape planning tool, which utilizes respective plant categories for deciduous and evergreen plants (p. 3 and 4, Figs. 1 and 2).

It would have been obvious to one skilled in the art, at the time of the Applicant's invention, to incorporate the teachings of Broderbund with the teachings of Mykrantz, because through such incorporation it would result in an easy and cost effective means for generating a garden landscape plan (p. 2) as well as provide addition optional detail

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which can be added to said garden such as the type (i.e. deciduous or evergreen) of plant to be planted.

13. In regard to claim 13 Mykrantz fails to teach wherein the unique symbols identify the deciduous plants and the evergreen plants. Broderbund teaches symbols for identifying deciduous plants and evergreen plants (Fig. 2).

14. Claims 14, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mykrantz (U.S. Patent No. 5, 246, 253), as applied to claims 9-11, 15 and 16, in view of Brimberg (U.S. Patent No. 4, 652, 239).

15. In regard to claim 14 Mykrantz fails to explicitly teach utilizing hardscape material and symbols for said material in said landscape plan. Brimberg teaches that the present invention relates to space planning, such as the preparation of floor plans and furniture arrangements in buildings and the landscape planning of yards and the like (col. 1, lines 13-16, 25-31). Brimberg teaches utilizing hardscape material (e.g. fence) and symbols for said material in said landscape plan (col. 2, lines 22-26; col. 4, lines 64-68; col. 5, lines 1-3).

It would have been obvious to one skilled in the art, at the time of the Applicant's invention, to incorporate the teachings of Brimberg with the teachings of Mykrantz, because through such incorporation it would provide additional structural and operational advantages over traditional space planning systems (col. 1, lines 56-60), such as allowing for greater detail to be added through the addition of hardscape material.

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16. In regard to claim 18 the rationale disclosed in the rejection of claim 14 is incorporated herein.

17. In regard to claim 19 the rationale disclosed in the rejection of claim 9 is incorporated herein.

### ***Response to Arguments***

18. Applicant's remarks have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure: Doerr (U.S. Patent No. 5, 575, 107) teaches that the present invention provides an interactive display means with easy visual identification of varieties of plants and planting requirements for the particular plant (col. 1, lines 40-42). Doerr further teaches that the present invention permits the customer to easily identify appropriate locations for each plant with respect to the height, spread, bloom time, texture and color of the particular plant (col. 4, lines 2-5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter-Anthony Pappas whose telephone number is 571-272-7646. The examiner can normally be reached on M-F 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ulka Chauhan can be reached on 571-272-7782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peter-Anthony Pappas  
Examiner  
Art Unit 2628

PP

  
ULKA CHAUHAN  
SUPERVISORY PATENT EXAMINER